IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16992 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KESHAJI GAGAJI THAKORE - Petitioner(s)

Versus

STATE OF GUJARAT THRO' ADDL. DEV. COMMISSIONER & 2 - Respondent(s)

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Appearance :

MR MEHUL H RATHOD for Petitioner No(s).: 1.

MR PR ABICDHANDANI AGP for Respondent No(s).: 1.
MR HS MUNSHAW for Respondent No(s).: 2.
MR SP MAJMUDAR for Respondent No(s).: 3.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 10/08/2005

ORAL JUDGMENT

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1. Heard learned Advocate Shri M.H.Rathod for the

petitioner, learned AGP Mr. P.R.Abichandani for Respondent No.1 and learned Advocate Mr.S.P.Majmudar for Respondent No.3.

2. In the present petition, the petitioner has challenged the order dated 27/2/2004 passed by the District Development Officer, Patan by which the petitioner came to be removed from the post of Sarpanch in exercise of powers under Section 57 (1) of the Gujarat Panchayat Act, 1993. The petitioner has also challenged the order passed by the Additional Development Commissioner dated 21st December, 2004 by which the order passed by the DDO came to be upheld in the appeal of the petitioner which came to be rejected.

3. The petitioner who was an elected Sarpanch of village Norta-Vata was served with a communication dated 27/2/2004 in which, it was alleged that the petitioner had mis-used his authority to ensure that his son is alloted a plot by the Government though as per the policy, the son was not entitled to receive such a plot. During the pendency of these proceedings another communication came to be issued against the petitioner levelling some more charges against him. Vide this

communication dated 31/5/2004, it was alleged against the petitioner that he had committed serious irregularities in running a fair price shop, license of which was given to him by the Government. It was stated that upon verification of the records, it was found that the petitioner had fabricated false bills in the name of 18 card holders and had mis-appropriated 144 litres of kerosene. On another occasion by creating duplicate bills in the name of 4 card holders 24 litres of kerosene was mis-used. It was also noticed that he had committed similar irregularities with respect to certain quantities of wheat and rice also. On the basis of these detected irregularities his license for fair price shop was suspended w.e.f. 30th June, 2004. It was, therefore, alleged that he had committed acts of serious mis-conduct and of disgraceful nature. In the said notice, it was alleged further that he had encroached 10 gunthas of land belonging to the Gram Panchayat.

4. The petitioner replied to the allegations levelled against him by separate representations. The District Development Officer after taking into consideration the representations of the petitioner found that the first charge levelled against the petitioner pursuant to notice

dated 27/2/2004 is not proved. In his impugned order dated 30th September, 2004 the District Development Officer, however, was pleased to hold that the petitioner had committed act of disgraceful nature while running the fair price shop. With respect to the charge of encroachment of panchayat lands, the District Development Officer concluded that it is not the petitioner but his son who has encroached the land in question. On the basis of these findings, the District Development Officer was pleased to remove the petitioner from the position of Sarpanch in exercise of Section 57 (1) of the Gujarat Panchayat Act, 1993. It may be noted that during the pendency of the proceedings against the petitioner the competent authority passed an order dated 30th June, 2004 by which the authorization of the property to run fair price shop came to be cancelled on the basis of the charges of serious irregularities in running the shop. It is however, the case of the petitioner that the petitioner had already appealed against the said order before the Government and appeal is pending. The learned advocate Shri Rathod however, conceded that no stay has been granted by the higher authority against the cancellation of the authorization of the petitioner. The additional Development Commissioner concurred with

the view of the District Development Officer and rejected the appeal filed by the petitioner by his order dated 30th September, 2004.

5. It is in this background, that the present petition has been filed challenging the orders passed by the authorities below by which the petitioner came to be removed as a Sarpanch.

6. As noted earlier that initially there were three charges against the petitioner, the first charge of having mis-used his authority to ensure allotment of plot of land in favour of his son was not believed by the District Development Officer and was dropped at that stage itself. So far as, the second charge is concerned there is hardly any dispute about the factual aspects. The fact of the petitioner running the fair price shop under the authorization of the Government is not disputed. The fact that his authorization initially came to be suspended and thereafter cancelled on the ground of his irregularities, details of which are noted herein above, is also not in dispute. It can, therefore, be seen that the petitioner's fair price shop license came to be cancelled on account of his commission of serious

irregularities in running the shop. On three different occasions, it was found that he had fabricated records to sell the quota of kerosene in open market. On three different occasions it was found that he had adopted similar modus-operandi with respect to controlled food grains. The acts and omissions of the petitioner are not of technical nature or of insignificant nature. The acts of the petitioner would certainly amount to disgraceful conduct on his part. Sub Section 1 of Section 57 of the Gujarat Panchayat Act **authorizes the competent authority to remove from office any member of the Panchayat, Sarpanch or Upa-Sarpanch after giving him an opportunity of being heard and after holding such inquiry as is found necessary, if such a person has been found guilty of mis-conduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in performance of his duties and functions under this act or has become incapable of performing his duties and functions**. In the present case the authorities found that on the basis of proved charges the petitioner is guilty of having committed disgraceful conduct and, therefore, the power under Section 57(1) of the Gujarat Panchayat Act, 1993 was exercised. I see, no reason to interfere with the orders passed by the

authority below in exercise of power under Article 226 of the Constitution of India.

7. Even segregating and ignoring for the time being the third charges against the petitioner of having encroached upon panchayat land, the charge of having committed serious irregularities in running the fair price shop was in itself sufficient to permit the authorities to exercise power under Section 57 (1) of the Gujarat Panchayat Act. In that view of the matter the reliance placed by the learned Advocate for the petitioner on the decisions of this Court dated 28/11/2001 rendered in S.C.A.6878/2001 and dated 28/11/2001 rendered in S.C.A.4220/2001 and connected matters would be of no avail. In the said decision, this Court had stressed upon the requirement of following the principles of natural justice before taking action under Section 57 (1) of the Gujarat Panchayat Act, 1993. It is the case of the petitioner that the report of the Taluka Development Officer which formed the basis of the initiation of the action of the petitioner was not supplied to him. Without going into the factual aspects of this averment as noted earlier, I find that all elements required to hold the second charge against the petitioner as having been

proved have been admitted by the petitioner and since there is no factual dispute about the necessary elements in this regard, I do not find that there has been any mis-carriage of justice in so far as the orders passed by the authorities below are concerned. In conclusion, I find no merit in the petition same is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

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